

E-132, 299/SA-88-996FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a the Application of the City
of Rochester to Adjust Its Service Area
Boundary with People's Cooperative Power
Association, Inc.

ISSUE DATE: September 14, 1989

DOCKET NO. E-132, 299/SA-88-996

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

The City of Rochester (Rochester or the City) operates Rochester Public Utilities (RPU) which provides electricity within the City limits. People's Cooperative Power Association (People's) provides electric service to customers located in its assigned service area, which completely surrounds Rochester. Each utility is also providing electric service to customers located within the assigned exclusive service area of the other.

The mutual service territory boundary between Rochester and People's was determined by the Minnesota Public Utilities Commission (the Commission) in 1975. In the Matter of the Establishment of Assigned Service Areas of Electric Utilities in Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, and Winona Counties, Pursuant to Chapter 429, Laws of Minnesota, 1974, Docket No. USA-12 (March 31, 1975). Since then, the City has expanded its municipal limits through over 75 separate annexations. As it did so, the City also extended electric service to the majority of new customers located in the annexed areas.

On April 22, 1988 People's filed a complaint against RPU with the Commission in Docket No. E-132/SA-88-270 (North Park I and II).

The third count of the complaint alleged that the City had violated People's exclusive service territory by extending electric service to 55 developments within People's assigned service area. People's requested that the matter be referred to the Attorney General's Office to seek penalties for the City's misconduct.

On June 27, 1988, the Commission issued its ORDER AUTHORIZING THE PROVISION OF ELECTRIC SERVICE DURING PROCEEDING and its NOTICE AND ORDER FOR HEARING in Docket No. E-132/SA-88-270. The Commission authorized the City to provide electric service to new customers in North Park First and Second Subdivisions until appropriate compensation could be determined and paid, and authorized People's to provide electric service to its existing customers in those subdivisions. The Commission referred the issue of compensation from the City to People's to the Office of Administrative Hearings for a contested case proceeding pursuant to Minn. Stat. § 216B.44 (1988). The Commission declined to take further action regarding the third count of the complaint.

On August 8, 1988, the Commission issued its ORDER DENYING RECONSIDERATION in that matter, affirming its June 27, 1988 Order. The Commission stated at pp. 2-3 of the August 8 Order:

The Commission believes that in the course of the contested case hearing on compensation, evidence of the City's development practices may be introduced that could lead to the Commission addressing the issue of possible referral to the Attorney General's Office at a later date. However, the Commission will not refer the matter at this time.

The Minnesota Department of Public Service (Department or DPS) then initiated an investigation into the allegations of People's in Docket No. E-132,299/DI-88-549.

On December 27, 1988, the City filed a request with the Commission under Minn. Stat. § 216B.39 to adjust its service area boundaries in this docket. The request included all areas annexed by the City since its service areas were assigned in 1974. This request included many of the same areas included in Docket No. E-132/SA-88-270.

On January 18, 1989 the DPS notified the Commission that it would consolidate its investigation with the review of the City's request in this case (Docket No. E-132, 299/SA-88-996). The Commission issued its ORDER CONSOLIDATING DOCKETS on June 8, 1989. Docket No. E-132, 299/SA-88-996 now addresses both these matters.

On July 14, 1989, the Department filed its review of this consolidated matter.

The Department recommended that the Commission set this matter for contested case hearing to address the following three issues:

1. Confirmation of the location of the service area boundary established in 1975 to accurately determine which service areas Rochester is seeking to acquire;
2. Determination of appropriate compensation for all types of areas Rochester would acquire from People's; and
3. Development of a complete record of possible service territory violations by Rochester, to be used by the Commission in determining whether to refer any violations to the Office of the Attorney General.

The DPS also noted that Rochester requested an adjustment in its service area boundaries under Minn. Stat. § 216B.39, subd. 3 (1988). The DPS stated that the proceeding should be governed by Minn. Stat. § 216B.44 (1988).

The Commission met on August 22, 1989 to consider this matter.

REFERRAL FOR ADMINISTRATIVE HEARING

Minn. Stat. § 216B.44 (1988) governs this proceeding. Minn. Stat. § 216B.39, subd.3 (1988) addresses the establishment of changes to service area boundaries outside of incorporated municipalities. Here, the boundary between the City and People's was set by contract under Minn. Stat. § 216B.39, subd. 4 which does not contain a provision for subsequent boundary changes. Minn. Stat. § 216B.44 (1988) provides for an orderly transfer of service territory when an area is annexed by a municipality that operates an electric utility and provides a method to determine appropriate compensation due from the annexing municipality to the displaced utility. The Commission is authorized to conduct this hearing and decide these issues under Minn. Stat. § 216B.44 (1988).

The Commission finds that the pleadings in this case present a dispute of material fact. Under the statute Rochester is required to compensate People's for any loss of property resulting from the City of Rochester's annexations. People's has requested the Commission to determine a fair price for Rochester to pay for its extension of service into People's territory. Rochester denies that People's sustained any loss of property as a result of the annexations.

The Commission concludes that this matter is a contested case within the meaning of Minn. Stat. § 14.02, subd. 3 (1988) and must be referred to the Office of Administrative Hearings under the provisions of Minn. Stat. § 14.58 (1988).

Finally, serious allegations have been made by People's that the City has violated Minn. Stat. §§ 216B.40 and 216B.44 and Commission Orders. The Commission believes that this contested case proceeding is the proper forum to develop a complete record regarding these alleged violations. The Commission will then be able to decide whether to refer any violations to the Office of the Attorney General for appropriate legal action pursuant to Minn. Stat. § 216B.54 (1988).

In summary, the contested case hearing in this matter should address the following issues:

1. Confirmation of the location of the service area boundary established in 1975 to accurately determine which service areas Rochester is seeking to acquire;
2. Determination of appropriate compensation for all types of areas Rochester would acquire from People's; and
3. Development of a complete record of possible service territory violations by Rochester, to be

used by the Commission in determining whether to refer any violations to the Office of the Attorney General for appropriate legal action under Minn. Stat. § 216B.54 (1988).

The Commission notes that in its ORDER ADDRESSING SHOW CAUSE FILING in In the Matter of an Application by the City of Rochester, Minnesota, for an Interim Service Order to Serve Certain Recently Annexed and Platted Undeveloped Land Within the City of Rochester Known as Viking Hills Third Subdivision and North Park Third Subdivision, Docket No. E-299, 132/SA-89-136 (June 30, 1989), it directed the DPS to address cease and desist issues in its report to the Commission in this docket. Specifically, the Department was asked to address whether the City should be ordered to cease and desist from providing service within People's authorized service area where the City has not been authorized to do so by the Commission and whether the City should be ordered to remove facilities in those circumstances.

In its July 14, 1989 Report, the DPS recommended against the Commission issuing an Order requiring the City to immediately cease and desist from providing service in areas where it has violated People's service area and to remove all unauthorized facilities. The Commission agrees and will not so order. Nevertheless, the Commission notes that the issues of compensation for these areas and possible statutory violations which may be referred to the Attorney General remain to be addressed in this docket.

Administrative Law Judge

The Administrative Law Judge assigned to this case is Phyllis Reha. Her address and telephone number are as follows: Office of Administrative Hearings, Fifth Floor Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; (612) 341-7611.

Prehearing Conference

The Administrative Law Judge will hold a prehearing conference in this matter on Monday, November 20, 1989 at 10:00 a.m. in the Commission's Large Hearing Room, 7th Floor, American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Hearing Schedule

The time and place of the hearing will be determined after the prehearing conference.

Hearing Procedure

The hearing will be conducted in accordance with the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400 and, to the extent that they are not superceded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400. These rules may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their position. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1988).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Gregory D. Dittrich, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101 (612) 296-9644.

ORDER

1. This matter is hereby referred to the Office of Administrative Hearings for contested case proceedings under Minn. Stat. § 14.58 (1988).
2. The hearing in this matter shall address the issues detailed above.
3. A prehearing conference will be held in this case on Monday, November 20, 1989 at 10:00 a.m. in the Commission's Large Hearing Room, 7th Floor, American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.
4. The time and place for the hearing in this matter will be determined after the prehearing conference.
5. This Order shall be effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)

